

1.1 A bill for an act

1.2 relating to human services; modifying certain provisions regarding persons with
1.3 sexual psychopathic personalities; amending Minnesota Statutes 2008, sections
1.4 253B.05, subdivision 1; 253B.10, subdivision 5; 253B.15, subdivision 1;
1.5 253B.18, subdivision 5a; 253B.185; 253B.19, subdivision 2; Minnesota Statutes
1.6 2009 Supplement, section 253B.14.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2008, section 253B.05, subdivision 1, is amended to read:

1.9 Subdivision 1. **Emergency hold.** (a) Any person may be admitted or held for
1.10 emergency care and treatment in a treatment facility, except to a facility operated by the
1.11 Minnesota sex offender program, with the consent of the head of the treatment facility
1.12 upon a written statement by an examiner that:

1.13 (1) the examiner has examined the person not more than 15 days prior to admission;

1.14 (2) the examiner is of the opinion, for stated reasons, that the person is mentally ill,
1.15 developmentally disabled, or chemically dependent, and is in danger of causing injury to
1.16 self or others if not immediately detained; and

1.17 (3) an order of the court cannot be obtained in time to prevent the anticipated injury.

1.18 (b) If the proposed patient has been brought to the treatment facility by another
1.19 person, the examiner shall make a good faith effort to obtain a statement of information
1.20 that is available from that person, which must be taken into consideration in deciding
1.21 whether to place the proposed patient on an emergency hold. The statement of information
1.22 must include, to the extent available, direct observations of the proposed patient's
1.23 behaviors, reliable knowledge of recent and past behavior, and information regarding
1.24 psychiatric history, past treatment, and current mental health providers. The examiner

S.F. No. 3251, as introduced - 86th Legislative Session (2009-2010) [10-5523]

2.1 shall also inquire into the existence of health care directives under chapter 145, and
2.2 advance psychiatric directives under section 253B.03, subdivision 6d.

2.3 (c) The examiner's statement shall be: (1) sufficient authority for a peace or health
2.4 officer to transport a patient to a treatment facility, (2) stated in behavioral terms and not in
2.5 conclusory language, and (3) of sufficient specificity to provide an adequate record for
2.6 review. If danger to specific individuals is a basis for the emergency hold, the statement
2.7 must identify those individuals, to the extent practicable. A copy of the examiner's
2.8 statement shall be personally served on the person immediately upon admission and a
2.9 copy shall be maintained by the treatment facility.

2.10 Sec. 2. Minnesota Statutes 2008, section 253B.10, subdivision 5, is amended to read:

2.11 Subd. 5. **Transfer to voluntary status.** At any time prior to the expiration of the
2.12 initial commitment period, a patient who has not been committed as mentally ill and
2.13 dangerous to the public or as a sexually dangerous person or as a sexual psychopathic
2.14 personality may be transferred to voluntary status upon the patient's application in writing
2.15 with the consent of the head of the facility. Upon transfer, the head of the treatment facility
2.16 shall immediately notify the court in writing and the court shall terminate the proceedings.

2.17 Sec. 3. Minnesota Statutes 2009 Supplement, section 253B.14, is amended to read:

2.18 **253B.14 TRANSFER OF COMMITTED PERSONS.**

2.19 The commissioner may transfer any committed person, other than a person
2.20 committed as mentally ill and dangerous to the public, or as a sexually dangerous person
2.21 or as a sexual psychopathic personality, from one regional treatment center to any other
2.22 treatment facility under the commissioner's jurisdiction which is capable of providing
2.23 proper care and treatment. When a committed person is transferred from one treatment
2.24 facility to another, written notice shall be given to the committing court, the county
2.25 attorney, the patient's counsel, and to the person's parent, health care agent, or spouse or, if
2.26 none is known, to an interested person, and the designated agency.

2.27 Sec. 4. Minnesota Statutes 2008, section 253B.15, subdivision 1, is amended to read:

2.28 Subdivision 1. **Provisional discharge.** The head of the treatment facility may
2.29 provisionally discharge any patient without discharging the commitment, unless the patient
2.30 was found by the committing court to be a person who is mentally ill and dangerous to the
2.31 public, or a sexually dangerous person or a sexual psychopathic personality.

2.32 Each patient released on provisional discharge shall have a written aftercare plan
2.33 developed which specifies the services and treatment to be provided as part of the

S.F. No. 3251, as introduced - 86th Legislative Session (2009-2010) [10-5523]

3.1 aftercare plan, the financial resources available to pay for the services specified, the
3.2 expected period of provisional discharge, the precise goals for the granting of a final
3.3 discharge, and conditions or restrictions on the patient during the period of the provisional
3.4 discharge. The aftercare plan shall be provided to the patient, the patient's attorney, and
3.5 the designated agency.

3.6 The aftercare plan shall be reviewed on a quarterly basis by the patient, designated
3.7 agency and other appropriate persons. The aftercare plan shall contain the grounds upon
3.8 which a provisional discharge may be revoked. The provisional discharge shall terminate
3.9 on the date specified in the plan unless specific action is taken to revoke or extend it.

3.10 Sec. 5. Minnesota Statutes 2008, section 253B.18, subdivision 5a, is amended to read:

3.11 Subd. 5a. **Victim notification of petition and release; right to submit statement.**

3.12 (a) As used in this subdivision:

3.13 (1) "crime" has the meaning given to "violent crime" in section 609.1095, and
3.14 includes criminal sexual conduct in the fifth degree and offenses within the definition of
3.15 "crime against the person" in section 253B.02, subdivision 4a, and also includes offenses
3.16 listed in section 253B.02, subdivision 7a, paragraph (b), regardless of whether they are
3.17 sexually motivated;

3.18 (2) "victim" means a person who has incurred loss or harm as a result of a crime
3.19 the behavior for which forms the basis for a commitment under this section or section
3.20 253B.185; and

3.21 (3) "convicted" and "conviction" have the meanings given in section 609.02,
3.22 subdivision 5, and also include juvenile court adjudications, findings under Minnesota
3.23 Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved,
3.24 and findings in commitment cases under this section or section 253B.185 that an act or
3.25 acts constituting a crime occurred.

3.26 (b) A county attorney who files a petition to commit a person under this section
3.27 or section 253B.185 shall make a reasonable effort to provide prompt notice of filing
3.28 the petition to any victim of a crime for which the person was convicted. In addition,
3.29 the county attorney shall make a reasonable effort to promptly notify the victim of the
3.30 resolution of the petition.

3.31 (c) Before provisionally discharging, discharging, granting pass-eligible status,
3.32 approving a pass plan, or otherwise permanently or temporarily releasing a person
3.33 committed under this section or section 253B.185 from a treatment facility, the head of the
3.34 treatment facility shall make a reasonable effort to notify any victim of a crime for which
3.35 the person was convicted that the person may be discharged or released and that the victim

4.1 has a right to submit a written statement regarding decisions of the medical director,
4.2 special review board, or commissioner with respect to the person. To the extent possible,
4.3 the notice must be provided at least 14 days before any special review board hearing or
4.4 before a determination on a pass plan. Notwithstanding section 611A.06, subdivision 4,
4.5 the commissioner shall provide the judicial appeal panel with victim information in order
4.6 to comply with the provisions of this section. The judicial appeal panel shall ensure that
4.7 the data on victims remains private as provided for in section 611A.06, subdivision 4.

4.8 (d) This subdivision applies only to victims who have requested notification by
4.9 contacting, in writing, the county attorney in the county where the conviction for the crime
4.10 occurred. A county attorney who receives a request for notification under this paragraph
4.11 shall promptly forward the request to the commissioner of human services.

4.12 (e) The rights under this subdivision are in addition to rights available to a victim
4.13 under chapter 611A. This provision does not give a victim all the rights of a "notified
4.14 person" or a person "entitled to statutory notice" under subdivision 4a, 4b, or 5 or section
4.15 253B.185, subdivision 10.

4.16 Sec. 6. Minnesota Statutes 2008, section 253B.185, is amended to read:

4.17 **253B.185 SEXUAL PSYCHOPATHIC PERSONALITY; SEXUALLY**
4.18 **DANGEROUS.**

4.19 Subdivision 1. **Commitment generally.** (a) Except as otherwise provided in this
4.20 section, the provisions of this chapter pertaining to persons who are mentally ill and
4.21 dangerous to the public apply with like force and effect to persons who are alleged or
4.22 found to be sexually dangerous persons or persons with a sexual psychopathic personality.
4.23 For purposes of this section, "sexual psychopathic personality" includes any individual
4.24 committed as a "psychopathic personality" under Minnesota Statutes 1992, section 526.10.

4.25 (b) Before commitment proceedings are instituted, the facts shall first be submitted
4.26 to the county attorney, who, if satisfied that good cause exists, will prepare the petition.
4.27 The county attorney may request a prepetition screening report. The petition is to be
4.28 executed by a person having knowledge of the facts and filed with the committing court
4.29 of the county in which the patient has a settlement or is present. If the patient is in the
4.30 custody of the commissioner of corrections, the petition may be filed in the county where
4.31 the conviction for which the person is incarcerated was entered.

4.32 (c) Upon the filing of a petition alleging that a proposed patient is a sexually
4.33 dangerous person or is a person with a sexual psychopathic personality, the court shall
4.34 hear the petition as provided in section 253B.18, except that section 253B.18, subdivision
4.35 2, shall not apply.

5.1 (d) In commitments under this section, the court shall commit the patient to a secure
5.2 treatment facility unless the patient establishes by clear and convincing evidence that a
5.3 less restrictive treatment program is available that is consistent with the patient's treatment
5.4 needs and the requirements of public safety.

5.5 (e) After a determination that a patient is a sexually dangerous person or sexual
5.6 psychopathic personality, the court shall order commitment for an indeterminate period of
5.7 time and the patient shall be transferred, provisionally discharged, or discharged, only as
5.8 provided in this section.

5.9 Subd. 1a. **Temporary confinement.** During any hearing held under this section, or
5.10 pending emergency revocation of a provisional discharge, the court may order the patient
5.11 or proposed patient temporarily confined in a jail or lockup but only if:

5.12 (1) there is no other feasible place of confinement for the patient within a reasonable
5.13 distance;

5.14 (2) the confinement is for less than 24 hours or, if during a hearing, less than 24
5.15 hours prior to commencement and after conclusion of the hearing; and

5.16 (3) there are protections in place, including segregation of the patient, to ensure
5.17 the safety of the patient.

5.18 Subd. 1b. **County attorney access to data.** Notwithstanding sections 144.291
5.19 to 144.298; 245.467, subdivision 6; 245.4876, subdivision 7; 260B.171; 260B.235,
5.20 subdivision 8; 260C.171; and 609.749, subdivision 6, or any provision of chapter 13
5.21 or other state law, prior to filing a petition for commitment as a sexual psychopathic
5.22 personality or as a sexually dangerous person, and upon notice to the proposed patient,
5.23 the county attorney or the county attorney's designee may move the court for an order
5.24 granting access to any records or data, to the extent it relates to the proposed patient, for
5.25 the purpose of determining whether good cause exists to file a petition and, if a petition
5.26 is filed, to support the allegations set forth in the petition.

5.27 The court may grant the motion if: (1) the Department of Corrections refers the case
5.28 for commitment as a sexual psychopathic personality or a sexually dangerous person; or
5.29 (2) upon a showing that the requested category of data or records may be relevant to
5.30 the determination by the county attorney or designee. The court shall decide a motion
5.31 under this subdivision within 48 hours after a hearing on the motion. Notice to the
5.32 proposed patient need not be given upon a showing that such notice may result in harm or
5.33 harassment of interested persons or potential witnesses.

5.34 Notwithstanding any provision of chapter 13 or other state law, a county attorney
5.35 considering the civil commitment of a person under this section may obtain records and
5.36 data from the Department of Corrections or any probation or parole agency in this state

6.1 upon request, without a court order, for the purpose of determining whether good cause
6.2 exists to file a petition and, if a petition is filed, to support the allegations set forth in the
6.3 petition. At the time of the request for the records, the county attorney shall provide notice
6.4 of the request to the person who is the subject of the records.

6.5 Data collected pursuant to this subdivision shall retain their original status and, if not
6.6 public, are inadmissible in any court proceeding unrelated to civil commitment, unless
6.7 otherwise permitted.

6.8 Subd. 2. **Transfer to correctional facility.** (a) If a person has been committed
6.9 under this section and later is committed to the custody of the commissioner of corrections
6.10 for any reason, including but not limited to, being sentenced for a crime or revocation of
6.11 the person's supervised release or conditional release under section 244.05; 609.3455,
6.12 subdivision 6, 7, or 8; Minnesota Statutes 2004, section 609.108, subdivision 6; or
6.13 Minnesota Statutes 2004, section 609.109, subdivision 7, the person shall be transferred to
6.14 a facility designated by the commissioner of corrections without regard to the procedures
6.15 provided in section 253B.18.

6.16 (b) If a person is committed under this section after a commitment to the
6.17 commissioner of corrections, the person shall first serve the sentence in a facility
6.18 designated by the commissioner of corrections. After the person has served the sentence,
6.19 the person shall be transferred to a treatment program designated by the commissioner
6.20 of human services.

6.21 Subd. 3. **Not to constitute defense.** The existence in any person of a condition of a
6.22 sexual psychopathic personality or the fact that a person is a sexually dangerous person
6.23 shall not in any case constitute a defense to a charge of crime, nor relieve such person
6.24 from liability to be tried upon a criminal charge.

6.25 Subd. 4. **Statewide judicial panel; commitment proceedings.** (a) The Supreme
6.26 Court may establish a panel of district judges with statewide authority to preside over
6.27 commitment proceedings of sexual psychopathic personalities and sexually dangerous
6.28 persons. Only one judge of the panel is required to preside over a particular commitment
6.29 proceeding. Panel members shall serve for one-year terms. One of the judges shall be
6.30 designated as the chief judge of the panel, and is vested with the power to designate the
6.31 presiding judge in a particular case, to set the proper venue for the proceedings, and to
6.32 otherwise supervise and direct the operation of the panel. The chief judge shall designate
6.33 one of the other judges to act as chief judge whenever the chief judge is unable to act.

6.34 (b) If the Supreme Court creates the judicial panel authorized by this section, all
6.35 petitions for civil commitment brought under subdivision 1 shall be filed with the supreme
6.36 court instead of with the district court in the county where the proposed patient is present,

7.1 notwithstanding any provision of subdivision 1 to the contrary. Otherwise, all of the
7.2 other applicable procedures contained in this chapter apply to commitment proceedings
7.3 conducted by a judge on the panel.

7.4 Subd. 5. **Financial responsibility.** (a) For purposes of this subdivision, "state
7.5 facility" has the meaning given in section 246.50 and also includes a Department of
7.6 Corrections facility when the proposed patient is confined in such a facility pursuant to
7.7 section 253B.045, subdivision 1a.

7.8 (b) Notwithstanding sections 246.54, 253B.045, and any other law to the contrary,
7.9 when a petition is filed for commitment under this section pursuant to the notice required
7.10 in section 244.05, subdivision 7, the state and county are each responsible for 50 percent of
7.11 the cost of the person's confinement at a state facility or county jail, prior to commitment.

7.12 (c) The county shall submit an invoice to the state court administrator for
7.13 reimbursement of the state's share of the cost of confinement.

7.14 (d) Notwithstanding paragraph (b), the state's responsibility for reimbursement is
7.15 limited to the amount appropriated for this purpose.

7.16 ~~Subd. 6. **Aftercare and case management.** The state, in collaboration with the~~
7.17 ~~designated agency, is responsible for arranging and funding the aftercare and case~~
7.18 ~~management services for persons under commitment as sexual psychopathic personalities~~
7.19 ~~and sexually dangerous persons discharged after July 1, 1999.~~

7.20 Subd. 7. **Rights of patients committed under this section.** (a) The commissioner
7.21 or the commissioner's designee may limit the statutory rights described in paragraph (b)
7.22 for patients committed to the Minnesota sex offender program under this section or with
7.23 the commissioner's consent under section 246B.02. The statutory rights described in
7.24 paragraph (b) may be limited only as necessary to maintain a therapeutic environment
7.25 or the security of the facility or to protect the safety and well-being of patients, staff,
7.26 and the public.

7.27 (b) The statutory rights that may be limited in accordance with paragraph (a) are
7.28 those set forth in section 144.651, subdivision 19, personal privacy; section 144.651,
7.29 subdivision 21, private communications; section 144.651, subdivision 22, retain and use
7.30 of personal property; section 144.651, subdivision 25, manage personal financial affairs;
7.31 section 144.651, subdivision 26, meet with visitors and participate in groups; section
7.32 253B.03, subdivision 2, correspond with others; and section 253B.03, subdivision 3,
7.33 receive visitors and make telephone calls. Other statutory rights enumerated by sections
7.34 144.651 and 253B.03, or any other law, may be limited as provided in those sections.

7.35 Subd. 8. **Petition and report required.** (a) Within 120 days of receipt of a
7.36 preliminary determination from a court under section 609.1351, or a referral from the

8.1 commissioner of corrections pursuant to section 244.05, subdivision 7, a county attorney
8.2 shall determine whether good cause under this section exists to file a petition, and if good
8.3 cause exists, the county attorney or designee shall file the petition with the court.

8.4 (b) Failure to meet the requirements of paragraph (a) does not bar filing a petition
8.5 under subdivision 1 any time the county attorney determines pursuant to subdivision 1
8.6 that good cause for such a petition exists.

8.7 ~~(c) By February 1 of each year, the commissioner of human services shall annually~~
8.8 ~~report to the respective chairs of the divisions or committees of the senate and house~~
8.9 ~~of representatives that oversee human services finance regarding compliance with this~~
8.10 ~~subdivision.~~

8.11 Subd. 9. **Petition for reduction in custody.** (a) This subdivision applies only
8.12 to committed persons as defined in paragraph (b). The procedures in ~~section 253B.18,~~
8.13 ~~subdivision 5a,~~ subdivision 10 for victim notification and right to submit a statement
8.14 ~~under section 253B.18~~ apply to petitions filed and reductions in custody recommended
8.15 under this subdivision.

8.16 (b) As used in this subdivision:

8.17 (1) "committed person" means an individual committed under this section, or under
8.18 this section and under section 253B.18, as mentally ill and dangerous. It does not include
8.19 persons committed only as mentally ill and dangerous under section 253B.18; and

8.20 (2) "reduction in custody" means transfer out of a secure treatment facility, a
8.21 provisional discharge, or a discharge from commitment. A reduction in custody is
8.22 considered to be a commitment proceeding under section 8.01.

8.23 (c) A petition for a reduction in custody or an appeal of a revocation of provisional
8.24 discharge may be filed by either the committed person or by the head of the treatment
8.25 facility and must be filed with and considered by a panel of the special review board
8.26 authorized under section 253B.18, subdivision 4c. A committed person may not petition
8.27 the special review board any sooner than ~~six~~ 12 months following either:

8.28 (1) the entry of judgment in the district court of the order for commitment issued
8.29 under section 253B.18, subdivision 3, or upon the exhaustion of all related appeal rights
8.30 in state court relating to that order, whichever is later; or

8.31 (2) any recommendation of the special review board or order of the judicial appeal
8.32 panel, or upon the exhaustion of all appeal rights in state court, whichever is later. The
8.33 ~~medical director~~ head of the treatment facility may petition at any time. The special
8.34 review board proceedings are not contested cases as defined in chapter 14.

8.35 (d) The special review board shall hold a hearing on each petition before issuing a
8.36 recommendation under paragraph (f). Fourteen days before the hearing, the committing

9.1 court, the county attorney of the county of commitment, the designated agency, an
9.2 interested person, the petitioner and the petitioner's counsel, and the committed person
9.3 and the committed person's counsel must be given written notice by the commissioner of
9.4 the time and place of the hearing before the special review board. Only those entitled to
9.5 statutory notice of the hearing or those administratively required to attend may be present
9.6 at the hearing. The patient may designate interested persons to receive notice by providing
9.7 the names and addresses to the commissioner at least 21 days before the hearing.

9.8 (e) A person or agency receiving notice that submits documentary evidence to the
9.9 special review board before the hearing must also provide copies to the committed person,
9.10 the committed person's counsel, the county attorney of the county of commitment, the case
9.11 manager, and the commissioner. The special review board must consider any statements
9.12 received from victims under ~~section 253B.18, subdivision 5a~~ subdivision 10.

9.13 (f) Within 30 days of the hearing, the special review board shall issue written
9.14 findings of fact and shall recommend denial or approval of the petition to the judicial
9.15 appeal panel established under section 253B.19. The commissioner shall forward the
9.16 recommendation of the special review board to the judicial appeal panel and to every
9.17 person entitled to statutory notice. No reduction in custody or reversal of a revocation
9.18 of provisional discharge recommended by the special review board is effective until it
9.19 has been reviewed by the judicial appeal panel and until 15 days after an order from the
9.20 judicial appeal panel affirming, modifying, or denying the recommendation.

9.21 **Subd. 10. Victim notification of petition and release; right to submit statement.**

9.22 (a) As used in this subdivision:

9.23 (1) "crime" has the meaning given to "violent crime" in section 609.1095, and
9.24 includes criminal sexual conduct in the fifth degree and offenses within the definition of
9.25 "crime against the person" in section 253B.02, subdivision 4a, and also includes offenses
9.26 listed in section 253B.02, subdivision 7a, paragraph (b), regardless of whether they are
9.27 sexually motivated;

9.28 (2) "victim" means a person who has incurred loss or harm as a result of a crime,
9.29 the behavior for which forms the basis for a commitment under this section or section
9.30 253B.18; and

9.31 (3) "convicted" and "conviction" have the meanings given in section 609.02,
9.32 subdivision 5, and also include juvenile court adjudications, findings under Minnesota
9.33 Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved,
9.34 and findings in commitment cases under this section or section 253B.18, that an act or
9.35 acts constituting a crime occurred.

10.1 (b) A county attorney who files a petition to commit a person under this section shall
10.2 make a reasonable effort to provide prompt notice of filing the petition to any victim of a
10.3 crime for which the person was convicted. In addition, the county attorney shall make a
10.4 reasonable effort to promptly notify the victim of the resolution of the petition.

10.5 (c) Before provisionally discharging, discharging, granting pass-eligible status,
10.6 approving a pass plan, or otherwise permanently or temporarily releasing a person
10.7 committed under this section from a treatment facility, the head of the treatment facility
10.8 shall make a reasonable effort to notify any victim of a crime for which the person was
10.9 convicted that the person may be discharged or released and that the victim has a right
10.10 to submit a written statement regarding decisions of the head of the treatment facility or
10.11 designee, or special review board, with respect to the person. To the extent possible, the
10.12 notice must be provided at least 14 days before any special review board hearing or before
10.13 a determination on a pass plan. Notwithstanding section 611A.06, subdivision 4, the
10.14 commissioner shall provide the judicial appeal panel with victim information in order to
10.15 comply with the provisions of this section. The judicial appeal panel shall ensure that the
10.16 data on victims remains private as provided for in section 611A.06, subdivision 4.

10.17 (d) This subdivision applies only to victims who have requested notification by
10.18 contacting, in writing, the county attorney in the county where the civil commitment
10.19 was filed or the head of the treatment facility. A county attorney who receives a request
10.20 for notification under this paragraph shall promptly forward the request to the head
10.21 of the treatment facility.

10.22 (e) Rights under this subdivision are in addition to rights available to a victim under
10.23 chapter 611A. This provision does not give a victim all the rights of a "notified person"
10.24 or a person "entitled to statutory notice" under subdivision 12 or 13 or section 253B.18,
10.25 subdivision 4a, 4b, or 5.

10.26 Subd. 11. **Transfer.** (a) A patient who is committed as a sexually dangerous person
10.27 or sexual psychopathic personality shall not be transferred out of a secure treatment
10.28 facility unless it appears to the satisfaction of the judicial appeal panel, after a hearing and
10.29 recommendation by a majority of the special review board, that the transfer is appropriate.
10.30 Transfer may be to other treatment programs under the commissioner's control.

10.31 (b) The following factors must be considered in determining whether a transfer
10.32 is appropriate:

10.33 (1) the person's clinical progress and present treatment needs;

10.34 (2) the need for security to accomplish continuing treatment;

10.35 (3) the need for continued institutionalization;

10.36 (4) which facility can best meet the person's needs; and

11.1 (5) whether transfer can be accomplished with a reasonable degree of safety for
11.2 the public.

11.3 Subd. 12. **Provisional discharge.** A patient who is committed as a sexual
11.4 psychopathic personality or sexually dangerous person shall not be provisionally
11.5 discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing
11.6 and a recommendation by a majority of the special review board, that the patient is capable
11.7 of making an acceptable adjustment to open society.

11.8 The following factors are to be considered in determining whether a provisional
11.9 discharge shall be recommended:

11.10 (1) whether the patient's course of treatment and present mental status indicate
11.11 there is no longer a need for treatment and supervision in the patient's current treatment
11.12 setting; and

11.13 (2) whether the conditions of the provisional discharge plan will provide a reasonable
11.14 degree of protection to the public and will enable the patient to adjust successfully to
11.15 the community.

11.16 Subd. 13. **Provisional discharge plan.** A provisional discharge plan shall be
11.17 developed, implemented, and monitored by the head of the treatment facility or designee
11.18 in conjunction with the patient and other appropriate persons. The head of the treatment
11.19 facility or designee shall, at least quarterly, review the plan with the patient and submit a
11.20 written report to the designated agency concerning the patient's status and compliance
11.21 with each term of the plan.

11.22 Subd. 14. **Provisional discharge; review.** A provisional discharge pursuant to this
11.23 section shall not automatically terminate. A full discharge shall occur only as provided in
11.24 subdivision 18. The commissioner shall notify the patient that the terms of a provisional
11.25 discharge continue unless the patient requests and is granted a change in the conditions
11.26 of provisional discharge or unless the patient petitions the special review board for a full
11.27 discharge and the discharge is granted by the judicial appeal panel.

11.28 Subd. 15. **Provisional discharge; revocation.** (a) The head of the treatment facility
11.29 may revoke a provisional discharge if either of the following grounds exist:

11.30 (1) the patient has departed from the conditions of the provisional discharge plan; or

11.31 (2) the patient is exhibiting behavior which may be dangerous to self or others.

11.32 (b) The head of the treatment facility may revoke the provisional discharge and,
11.33 either orally or in writing, order that the patient be immediately returned to the treatment
11.34 facility. A report documenting reasons for revocation shall be issued by the head of the
11.35 treatment facility within seven days after the patient is returned to the treatment facility.
11.36 Advance notice to the patient of the revocation is not required.

12.1 (c) The patient must be provided a copy of the revocation report and informed, orally
12.2 and in writing, of the rights of a patient under this section. The revocation report shall be
12.3 served upon the patient, the patient's counsel, and the designated agency. The report shall
12.4 outline the specific reasons for the revocation, including but not limited to the specific
12.5 facts upon which the revocation recommendation is based.

12.6 (d) An individual who is revoked from provisional discharge must successfully
12.7 re-petition the special review board and judicial appeal panel prior to being placed back
12.8 on provisional discharge.

12.9 Subd. 16. **Return of absent patient.** If the patient is absent without authorization,
12.10 the head of the treatment facility or designee may request a peace officer to return
12.11 the patient to the treatment facility. The head of the treatment facility shall inform the
12.12 committing court of the revocation or absence, and the court shall direct a peace officer
12.13 in the county where the patient is located to return the patient to the treatment facility or
12.14 to another treatment facility. The expense of returning the patient to a treatment facility
12.15 shall be paid by the commissioner unless paid by the patient or other persons on the
12.16 patient's behalf.

12.17 Subd. 17. **Appeal.** Any patient aggrieved by a revocation decision or any interested
12.18 person may petition the special review board within seven days, exclusive of Saturdays,
12.19 Sundays, and legal holidays, after receipt of the revocation report for a review of the
12.20 revocation. The matter shall be scheduled within 30 days. The special review board shall
12.21 review the circumstances leading to the revocation and shall recommend to the judicial
12.22 appeal panel whether or not the revocation shall be upheld. The special review board may
12.23 also recommend a new provisional discharge at the time of the revocation hearing.

12.24 Subd. 18. **Discharge.** A patient who is committed as a sexual psychopathic
12.25 personality or sexually dangerous person shall not be discharged unless it appears to the
12.26 satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority
12.27 of the special review board, that the patient is capable of making an acceptable adjustment
12.28 to open society, is no longer dangerous to the public, and is no longer in need of inpatient
12.29 treatment and supervision.

12.30 In determining whether a discharge shall be recommended, the special review board
12.31 and judicial appeal panel shall consider whether specific conditions exist to provide a
12.32 reasonable degree of protection to the public and to assist the patient in adjusting to the
12.33 community. If the desired conditions do not exist, the discharge shall not be granted.

12.34 Subd. 19. **Aftercare services.** The Minnesota sex offender program shall provide
12.35 the supervision, aftercare, and case management services for a person under commitment
12.36 as sexual psychopathic personalities and sexually dangerous persons discharged after

S.F. No. 3251, as introduced - 86th Legislative Session (2009-2010) [10-5523]

13.1 July 1, 1999. The designated agency shall assist with client eligibility for public welfare
13.2 benefits and will provide those services that are currently available exclusively through
13.3 county government.

13.4 Prior to the date of discharge or provisional discharge of any patient committed as a
13.5 sexual psychopathic personality or sexually dangerous person, the head of the treatment
13.6 facility or designee shall establish a continuing plan of aftercare services for the patient,
13.7 including a plan for medical and behavioral health services, financial sustainability,
13.8 housing, social supports, or other assistance the patient needs. The Minnesota sex offender
13.9 program shall provide case management services and shall assist the patient in finding
13.10 employment, suitable shelter, and adequate medical and behavioral health services and
13.11 otherwise assist in the patient's readjustment to the community.

13.12 Sec. 7. Minnesota Statutes 2008, section 253B.19, subdivision 2, is amended to read:

13.13 Subd. 2. **Petition; hearing.** (a) A person committed as mentally ill and dangerous
13.14 to the public under section 253B.18, or the county attorney of the county from which the
13.15 person was committed or the county of financial responsibility, may petition the judicial
13.16 appeal panel for a rehearing and reconsideration of a decision by the commissioner under
13.17 section 253B.18, subdivision 5. The judicial appeal panel must not consider petitions for
13.18 relief other than those considered by the commissioner from which the appeal is taken.
13.19 The petition must be filed with the Supreme Court within 30 days after the decision of
13.20 the commissioner is signed. The hearing must be held within 45 days of the filing of the
13.21 petition unless an extension is granted for good cause.

13.22 (b) A person committed as a sexual psychopathic personality or as a sexually
13.23 dangerous person under section 253B.185, or committed as both mentally ill and
13.24 dangerous to the public under section 253B.18 and as a sexual psychopathic personality or
13.25 as a sexually dangerous person under section 253B.185; the county attorney of the county
13.26 from which the person was committed or the county of financial responsibility; or the
13.27 commissioner may petition the judicial appeal panel for a rehearing and reconsideration
13.28 of a decision of the special review board under section 253B.185, subdivision 9. The
13.29 petition must be filed with the Supreme Court within 30 days after the decision is mailed
13.30 by the commissioner as required in section 253B.185, subdivision 9, paragraph (f). The
13.31 hearing must be held within 180 days of the filing of the petition unless an extension is
13.32 granted for good cause. If no party petitions the judicial appeal panel for a rehearing
13.33 or reconsideration within 30 days, the judicial appeal panel shall either issue an order
13.34 adopting the recommendations of the special review board or set the matter on for a
13.35 hearing pursuant to this paragraph.

S.F. No. 3251, as introduced - 86th Legislative Session (2009-2010) [10-5523]

14.1 (c) For an appeal under paragraph (a) or (b), the Supreme Court shall refer the
14.2 petition to the chief judge of the judicial appeal panel. The chief judge shall notify the
14.3 patient, the county attorney of the county of commitment, the designated agency, the
14.4 commissioner, the head of the treatment facility, any interested person, and other persons
14.5 the chief judge designates, of the time and place of the hearing on the petition. The notice
14.6 shall be given at least 14 days prior to the date of the hearing.

14.7 (d) Any person may oppose the petition. The patient, the patient's counsel, the
14.8 county attorney of the committing county or the county of financial responsibility, and the
14.9 commissioner shall participate as parties to the proceeding pending before the judicial
14.10 appeal panel and shall, no later than 20 days before the hearing on the petition, inform the
14.11 judicial appeal panel and the opposing party in writing whether they support or oppose
14.12 the petition and provide a summary of facts in support of their position. The judicial
14.13 appeal panel may appoint examiners and may adjourn the hearing from time to time.
14.14 It shall hear and receive all relevant testimony and evidence and make a record of all
14.15 proceedings. The patient, the patient's counsel, and the county attorney of the committing
14.16 county or the county of financial responsibility have the right to be present and may
14.17 present and cross-examine all witnesses and offer a factual and legal basis in support of
14.18 their positions. The petitioning party seeking discharge or provisional discharge bears the
14.19 burden of going forward with the evidence which means presenting a prima facie case
14.20 with competent evidence on each statutory factor. The party opposing discharge bears
14.21 the burden of proof by clear and convincing evidence that the respondent is in need of
14.22 commitment. The burden of persuasion shall be on a party seeking transfer and shall be by
14.23 a preponderance of the evidence.